

Introduced by Senator Yee

(Principal coauthor: Assembly Member Maienschein)

February 20, 2014

An act to amend Sections 1569.48 and 1569.49 of the Health and Safety Code, relating to residential care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1218, as introduced, Yee. Residential care facilities for the elderly: civil penalties.

Existing law establishes the State Department of Social Services and sets forth its powers and duties, including, but not limited to, the licensing and administration of residential care facilities for the elderly.

Existing law authorizes the department to impose various civil penalties for licensing violations. Existing law sets the minimum civil penalty at \$25 and the maximum penalty at \$150 per day per violation, and permits additional civil penalties for repeat violations within a 12-month period.

This bill would increase the civil penalties, including the penalties for repeat offenses, and would vary the minimum and maximum penalties depending upon the seriousness of the harm to the resident.

This bill would, in the case of citations imposing civil penalties for violations that caused death or serious bodily injury to the resident, require that the decision to issue the citation be reviewed by the department's legal office and be approved by the deputy director prior to the issuance of the citation.

This bill would require that the appeal procedure include notice to the complainant, affected residents, and, if possible, their legal representatives, the opportunity to participate in the appeal, and an option for review by an administrative law judge.

This bill would, in cases involving death or serious bodily injury of a resident, require the department to prove that the violation was a direct proximate cause of the death or serious bodily injury, and that it resulted from an occurrence of a nature that the statute or regulation was designed to prevent. The bill would require dismissal of the citation if the licensee proves that the licensee did what might reasonably be expected of a residential care facility for the elderly licensee, acting under similar circumstances, to comply with the statute or regulation.

The bill would specify that, in an enforcement action pursuant to these provisions, a licensee is liable for the acts and omissions of its officers and employees.

Existing law authorizes the establishment of a fund and authorizes deposit of up to 50% of the revenue from these civil penalties into this fund, to be utilized, upon appropriation by the Legislature, for the purposes of relocation and care of residents when a facility's license is revoked or temporarily suspended.

This bill would, instead, establish the Emergency Resident Relocation Fund and would require deposit of 50% of the revenue from these civil penalties into the fund to be used for these purposes, upon appropriation by the Legislature.

This bill would require the department, by January 1, 2016, to amend its regulations to accommodate changes in these provision made by this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1569.48 of the Health and Safety Code
2 is amended to read:
3 1569.48. ~~A fund may be established to which not more than~~
4 *The Emergency Resident Relocation Fund is hereby established*
5 *within the State Treasury. The department shall deposit into the*
6 *fund 50 percent of each penalty assessed pursuant to Section*
7 ~~1569.49 is transmitted to the department for use 1569.49. Upon~~
8 *appropriation by the Legislature, moneys in the fund shall be used*
9 *by the Community Care Licensing Division of the department to*
10 ~~establish an fund emergency resident relocation fund to be utilized~~
11 ~~for the relocation and care of residents when a facility's license is~~
12 ~~revoked or temporarily suspended, when appropriated by the~~

~~Legislature~~. *suspended*. The money in the fund shall cover costs, including, but not limited to, transportation expenses, expenses incurred in notifying family members, and any other costs directly associated with providing continuous care to the residents. The department shall seek the advice of providers in developing a state plan for emergency resident relocation.

SEC. 2. Section 1569.49 of the Health and Safety Code is amended to read:

1569.49. (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty. The department shall adopt regulations setting forth the appeal procedures for deficiencies. *The appeal procedure shall include notice to the complainant, affected residents, and, if possible, their legal representatives, and the opportunity to participate in the appeal. Appeal procedure shall include an option for review by an administrative law judge.*

(b) The amount of the civil penalty shall not be less than ~~twenty-five dollars (\$25)~~ *one hundred dollars (\$100)* or more than ~~fifty dollars (\$50)~~ *two hundred fifty dollars (\$250)* per day for each violation of this chapter ~~except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event, shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.~~ *chapter, or of any regulations adopted by the department pursuant to this chapter. When assessed, the per-day civil penalty shall end once the licensee submits documentation of correction, if the correction is verified by the department.*

(c) Notwithstanding Section 1569.33, the department shall assess an immediate civil penalty of ~~one hundred fifty dollars (\$150)~~ *one thousand dollars (\$1,000)* per day per violation for any of the following serious violations:

(1) (A) Fire clearance violations, including, but not limited to, overcapacity, ambulatory status, inoperable smoke alarms, and inoperable fire alarm systems. The civil penalty shall not be assessed if the licensee has done either of the following:

(i) Requested the appropriate fire clearance based on ambulatory, nonambulatory, or bedridden status, and the decision is pending.

(ii) Initiated eviction proceedings.

1 (B) A licensee denied a clearance for bedridden residents may
2 appeal to the fire authority, and, if that appeal is denied, may
3 subsequently appeal to the Office of the State Fire Marshal, and
4 shall not be assessed an immediate civil penalty until the final
5 appeal is decided, or after 60 days has passed from the date of the
6 citation, whichever is earlier.

7 (2) Absence of supervision as required by statute or regulation.

8 (3) Accessible bodies of water, when prohibited in this chapter
9 or regulations adopted pursuant to this chapter.

10 (4) Accessible firearms, ammunition, or both.

11 (5) Refused entry to a facility or any part of a facility in violation
12 of Section 1569.32, 1569.33, or 1569.35.

13 (6) The presence of an excluded person on the premises.

14 (d) *For a violation that the department determines was the direct*
15 *proximate cause of death to a resident, the minimum civil penalty*
16 *shall be five thousand dollars (\$5,000) and the maximum civil*
17 *penalty shall be fifteen thousand dollars (\$15,000).*

18 (e) *For a violation that the department determines was the direct*
19 *proximate cause of “serious bodily injury” as defined in Section*
20 *15610.67 of the Welfare and Institutions Code, the minimum civil*
21 *penalty shall be one thousand dollars (\$1,000) and the maximum*
22 *civil penalty shall be ten thousand dollars (\$10,000).*

23 (f) *For a violation that the department determines constitutes*
24 *“physical abuse” as defined in Section 15610.63 of the Welfare*
25 *and Institutions Code, but does not result in “serious bodily injury”*
26 *as defined in Section 15610.67 of the Welfare and Institutions*
27 *Code, and it is determined by the department that the abuse was*
28 *committed by the licensee or an employee of the licensee, the*
29 *minimum civil penalty shall be five hundred dollars (\$500) and*
30 *the maximum civil penalty shall be two thousand five hundred*
31 *dollars (\$2,500).*

32 (g) (1) *In any action to enforce a citation issued under*
33 *subdivisions (d) or (e), the department shall have the burden of*
34 *proving both of the following:*

35 (A) *The violation was a direct proximate cause of the death or*
36 *serious bodily injury of a resident.*

37 (B) *The death or serious bodily injury resulted from an*
38 *occurrence of a nature that the statute or regulation was designed*
39 *to prevent.*

1 (2) If the department meets its burden of proof, the licensee
2 shall have the burden of proving that the licensee did what might
3 reasonably be expected of a residential care facility for the elderly
4 licensee, acting under similar circumstances, to comply with the
5 statute or regulation. If the licensee sustains this burden, then the
6 citation shall be dismissed.

7 (h) Prior to the issuance of a citation imposing a civil penalty
8 under subdivision (d) or (e), the decision shall be reviewed by the
9 department's legal division and approved by the deputy director.

10 ~~(d)~~

11 (i) Notwithstanding Section 1569.33, any residential care facility
12 for the elderly that is cited for repeating the same violation of this
13 chapter within 12 months of the first violation is subject to an
14 immediate civil penalty of ~~one hundred fifty dollars (\$150) and~~
15 ~~fifty dollars (\$50)~~ one thousand dollars (\$1,000) and, thereafter,
16 an ongoing civil penalty of two hundred dollars (\$200) for each
17 day the violation continues until the licensee submits
18 documentation demonstrating that the deficiency is corrected, if
19 the correction is verified by the department.

20 ~~(e)~~

21 (j) Any residential care facility for the elderly that is assessed
22 a civil penalty pursuant to subdivision ~~(d)~~ which (i) that repeats
23 the same violation of this chapter within 12 months of the violation
24 subject to subdivision ~~(d)~~ (i) shall be assessed an immediate civil
25 penalty of ~~one thousand dollars (\$1,000) and one hundred dollars~~
26 ~~(\$100)~~ two thousand dollars (\$2,000) and, thereafter, an ongoing
27 civil penalty of two hundred dollars (\$200) for each day the
28 violation continues until the licensee submits documentation
29 demonstrating that the deficiency is corrected, if the correction is
30 verified by the department.

31 (k) In assessing a civil penalty for a violation under this section,
32 the department shall consider all relevant information, including,
33 but not limited to, both of the following:

34 (1) The probability and severity of the risk of harm that the
35 violation presents to the resident's mental and physical condition.

36 (2) The good faith efforts of the facility to prevent the violation
37 from occurring.

38 (l) In any enforcement actions taken by the department, the
39 licensee shall be liable for the acts and omissions of its officers
40 and employees.

1 ~~(f)~~

2 (m) The department shall adopt regulations implementing this
3 section.

4 (n) *The department shall, by January 1, 2016, adopt amendments*
5 *to its regulations adopted pursuant to this section in order to*
6 *incorporate changes necessary to accommodate amendments to*
7 *this section made by the act that added this subdivision. The*
8 *regulations adopted or amended by the department pursuant to*
9 *subdivision (m) shall remain in effect until amended by the*
10 *department pursuant to this subdivision.*

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